

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Revocation of the
License of Shannon Johnson to Provide
Child Foster Care

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on April 20, 2005, at the Anoka County Courthouse, Room W320, 325 E. Main Street, Anoka, Minnesota. The OAH record closed at the end of the hearing.

Kristen Larson, Assistant Anoka County Attorney, 2100 Third Avenue, Anoka, MN 55303-2265, appeared on behalf of the Anoka County Social Services Department and the Minnesota Department of Human Services.

Shannon Johnson, 3559 92nd Avenue, Circle Pines, Minnesota 55014, appeared for herself without counsel. Joseph Johnson also appeared.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

1. Did the Department properly consider all relevant factors in determining not to set aside the disqualification of Joseph Johnson?

2. Did the Department properly revoke Shannon Johnson's license to provide foster care to her sister's children based on Joseph Johnson's disqualification?

The Administrative Law Judge concludes the Department failed to consider Minn. Stat. § 245A.035, subd. 5, which provides that in licensing a relative for foster care, the Commissioner shall consider the importance of maintaining the child's relationship with relatives as an additional significant factor in determining whether to set aside a licensing disqualifier under Minn. Stat. § 245C.22. When this significant factor is considered, the Administrative Law Judge concludes the disqualification should be set aside and the order of revocation rescinded.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Shannon Florek married Joseph Johnson in 1990. They have two children, boys now aged 16 and 11. The Johnsons have had a close relationship with Shannon Johnson's niece and nephew, R.F. and R.F., since the time of their birth. R.F. and R.F. are now ages 12 and 15, respectively. Their mother, Shannon Johnson's sister, has been chronically unstable for a variety of reasons, including methamphetamine use. The niece and nephew have stayed with the Johnsons sporadically over the years during times when the parents were unable to provide a home. The Johnsons' children have a close relationship with their cousins.^[1]

2. In 1996, Joseph Johnson and Shannon Johnson got into an argument after he had been drinking. He threw some items around and broke them.^[2] He was convicted of fifth-degree domestic assault and sentenced to two years of probation. The terms of his probation required him to complete a chemical dependency evaluation and follow all recommendations; to complete anger counseling; to refrain from using alcohol or drugs; and to engage in no similar conduct for two years.^[3] He completed his probation satisfactorily, and the sentence expired in September 1998.^[4]

3. In March of 2000, Joseph Johnson again argued with Shannon Johnson after he had been drinking. He yelled at her and threw his car keys at her, striking her in the leg. He also punched a hole in a wall, knocked a coat rack and envelope holder off the wall, and stood between Shannon Johnson and the telephone in an attempt to keep her from calling the police.^[5] He was convicted of fifth-degree domestic assault and sentenced to two years of probation. The terms of his probation required him to

complete a chemical dependency evaluation and comply with recommendations, attend domestic abuse counseling, refrain from using alcohol or other chemicals, to refrain from possessing any handguns for three years, and to engage in no similar conduct for two years.^[6] He went through chemical dependency treatment for 30 days with 12 weeks of aftercare.^[7] He completed his probation satisfactorily, and the sentence expired in June 2002.^[8]

4. In January 2002, Shannon Johnson and Joseph Johnson divorced. Shannon Johnson resumed using the name Shannon Florek.

5. In August 2003, Shannon Florek called the police because Joseph Johnson was at her residence. He was intoxicated and being disruptive. He began throwing things in the kitchen.^[9] He was convicted of fifth-degree domestic assault and sentenced to two years of probation. The terms of his probation required him to complete a chemical dependency evaluation; complete counseling as recommended by corrections; submit to breath or urine analysis on demand; refrain from using alcohol; and engage in no similar conduct for two years.^[10] He began counseling services and has been attending Alcoholics Anonymous each week since that time.^[11] He is on probation for this offense until December 2005.

6. On January 4, 2004, Shannon Florek called the police because Joseph Johnson was at her residence and was intoxicated. He left, and no charges were filed against him.^[12] Shortly after this incident, Joseph Johnson underwent testing for attention deficit hyperactivity disorder (ADHD). He has been taking an effective medication for ADHD for approximately one year.^[13]

7. On January 11, 2004, Shannon Florek applied for an Emergency Relative Foster Care license so that she could care for her niece and nephew.^[14] On the application, Shannon Florek identified Joseph Johnson as her fiancé.^[15] She informed the licensing social worker that she and Joseph Johnson were engaged to be married. The licensing social worker was aware of his misdemeanor convictions and aware that these convictions would likely be considered disqualifications. They agreed that if the children were placed with Shannon Johnson, Joseph Johnson would move to his aunt's residence.^[16] Johnson moved to his aunt's residence as agreed.^[17]

8. The Department of Human Services issued Shannon Florek an Emergency Relative Foster Care License on January 7, 2004.

9. Shannon Johnson's niece and nephew were placed in her home.^[18] The children did well there. Johnson brought them to counseling and arranged medical care. Their attendance at school improved dramatically, and their schoolwork improved as well. Although it was difficult for the foster children to accept rules initially, they learned to accept that family rules would be enforced.^[19]

10. In March 2004, the Department issued Shannon Florek a Child Foster Care license.^[20]

11. In May 2004, the county notified Joseph Johnson that based on the three misdemeanor convictions for domestic assault, he was disqualified from having direct contact with persons served by the program. Pending his request for reconsideration, he was permitted to have contact with the foster children only when he was within sight or hearing of another adult caregiver.^[21]

12. On May 20, 2004, Joseph Johnson requested reconsideration of the disqualification determination.^[22]

13. On June 16, 2004, the Anoka County licensing worker recommended that the Department not set aside the disqualification. She further recommended that the Department grant a variance with the following conditions: no same or similar offenses and follow all court-ordered conditions and recommendations made in previous chemical dependency evaluations.^[23]

14. On October 27, 2004, Shannon Florek and Joseph Johnson remarried.^[24] Shannon Johnson called the licensing social worker on October 28, 2004, to report the marriage and to inform her that Joseph Johnson would continue to live at his aunt's home.^[25]

15. On January 26, 2005, the Department of Human Services notified Anoka County that a variance would not be granted and that Anoka County needed to initiate the process to revoke Shannon Johnson's foster care license.^[26]

16. On February 3, 2005, the Department notified Joseph Johnson that the disqualification would not be set aside and that no variance would be granted. The letter states that the Commissioner applied all eight factors set forth in Minn. Stat. § 245C.22, subd. 3, and found the following factors determinative: (1) the number of disqualifying events; (2) the violent nature of the disqualifying events; (3) the recency of the last disqualifying event; (4) the lack of evidence of sufficient rehabilitation; and (5) the vulnerability of foster care children, and the possibility that they would present extensive challenging behaviors to their caregivers due to their history of family instability. The letter stated that although his disqualifying offenses involved his wife and not a foster care child, "there is a greater risk that [he] would react in a similar manner to challenging behavior by the foster care children, than would a person who has never committed a domestic assault."^[27]

17. In reaching this decision, the Department gave no consideration to Minn. Stat. § 245A.035, subd. 5, which provides that in licensing a relative, the commissioner shall consider the importance of maintaining the child's relationship with relatives as an additional significant factor in determining whether to set aside a licensing disqualifier under section 245C.22, or to grant a variance of licensing requirements under sections 245C.21 to 245C.27.^[28]

18. On February 3, 2005, the Department revoked Shannon Johnson's license to provide child foster care.

19. On February 6, 2005, Shannon Johnson's niece and nephew were removed from her home with two hours of notice and placed in a different foster care home. It is difficult for her to remain in contact with the children because of restrictions placed by the new foster home; the Johnsons are rarely able to see the children, and they are restricted to ten-minute telephone conversations. Their removal from her home has been traumatic for the foster children and for Shannon Johnson's family.^[29]

20. Shannon Johnson requested a timely appeal of the Department's determinations not to set aside Joseph Johnson's disqualification and to revoke her foster care license.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. § § 14.50 and 245A.08.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department and Anoka County have complied with all procedural requirements of law and rule.

4. The commissioner may suspend or revoke a license if the license holder fails to comply fully with applicable laws or rules.^[30]

5. Minn. Stat. § 245C.14, subd. 2(b), provides in relevant part that no individual who is disqualified following a background study may be allowed access to persons served by the program unless the commissioner has set aside the disqualification or granted a variance for the disqualified individual to the license holder.

6. The following factors are to be considered in determining whether an individual poses a risk of harm: the nature, severity and consequences of the event; whether there is more than one disqualifying event; the age and vulnerability of the victim; the harm suffered by the victim; the similarity between the victim and persons served by the program; the time elapsed without a repeat of same or similar event; documentation of successful completion of training or rehabilitation; and any other information relevant to reconsideration.^[31] In addition, the commissioner shall give preeminent weight to the safety of each person served by the license holder.^[32]

7. In licensing a relative, the commissioner shall consider the importance of maintaining the child's relationship with relatives as an additional significant factor in determining whether to set aside a licensing disqualifier under section 245A.04, subd. 3b, or to grant a variance of licensing requirements under section 245A.04, subd. 9.^[33]

8. Joseph Johnson does not pose a risk of harm to any person served by the license holder, and his disqualification should be set aside.

9. Because Joseph Johnson's disqualification should be set aside, there is no basis for revoking Shannon Johnson's foster care license pursuant to Minn. Stat. § 245A.07, subd. 3.

10. The Memorandum attached hereto is incorporated by reference into these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the commissioner's orders denying reconsideration of Joseph Johnson's disqualification and revoking Shannon Johnson's foster care license be rescinded.

Dated this 20th day of May, 2005.

S/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY

Administrative Law Judge

Reported: Taped (three tapes)

MEMORANDUM

Minn. Stat. § 245C.22, subd. 4, sets out the factors to be considered in determining whether an individual poses a risk of harm: the nature, severity and consequences of the event; whether there is more than one disqualifying event; the age and vulnerability of the victim; the harm suffered by the victim; the similarity between the victim and persons served by the program; the time elapsed without a repeat of the same or similar event; documentation of successful completion of training or rehabilitation; and any other information relevant to reconsideration.

The Department considered the risk of harm factors identified above in making its determination that the disqualification would not be set aside, nor would a variance be granted. In her testimony, the Department's witness referred several times to the "statutory mandate" to use this analysis. The record does not reflect, however, that Department gave any consideration to another factor that is mandated by statute: the requirement of Minn. Stat. § 245A.035, subd. 5, that in licensing a relative, the commissioner shall consider the importance of maintaining the child's relationship with relatives as an "additional significant factor" in determining whether to set aside a licensing disqualifier under section 245C.22, or to grant a variance of licensing requirements under sections 245C.21 to 245C.27. The Department's witness, Jennifer

Park, testified that she knew of no such requirement and that the “risk of harm” factors provided the basis for her decision.

Consideration of maintaining a foster child’s relationship with a relative is an express statutory requirement in determining whether to set aside a disqualification. Licensing relatives for foster care is different from licensing foster care in other situations. The statute reflects a legislative determination that it is important to maintain the relationship between children in foster care and their relatives, and that this factor is to be considered significant in determining whether a disqualification is to be set aside.

In addition, Minn. Stat. § 245C.22 allows for consideration of any other “relevant information.” In this case, Shannon Johnson’s niece and nephew had lived with her for 13 months at the time the Department determined that it would not reconsider the disqualification. The reconsideration request itself had been pending for eight months, even though Minn. Stat. § 245C.22, subd., 1, requires the commissioner to respond to the request within 45 working days, if the basis for a disqualified person’s reconsideration request is that the information relied upon was incorrect and that the individual does not pose a risk of harm.

If the Department had made its decision not to set aside the disqualification in a timely manner, there would be less relevant evidence to consider; however, by the time the Department made its decision here, there was a 13-month history showing only that the children had done well, that Shannon Johnson had complied with all requirements of licensure, and that there were no further incidents involving Joseph Johnson’s use of alcohol.^[34] The Department did not consider, based on this record, whether the “potential” risk of harm had been translated into any actual harm. At that point, when weighing the “risk of harm” factors with the additional significant factor that it is important to maintain the relationship between the foster children and their relatives, the Department should have determined that Joseph Johnson does not pose a risk of harm to these children. If new information were to come to light indicating that he posed a risk of harm, the commissioner could rescind the set aside.^[35] The protections built into the statute are sufficient to conclude that Joseph Johnson’s disqualification should be set aside, and the revocation of Shannon Johnson’s foster care license should be rescinded.

K.D.S.

^[1] Testimony of Shannon Johnson; Testimony of Joseph Johnson.

^[2] Ex. 17.

^[3] Ex. 6 at 8.

^[4] Ex. 6 at 9.

^[5] Ex. 6 at 4.

^[6] Ex. 6 at 3.

^[7] Ex. 17.

^[8] Ex. 6 at 9.

[9] Ex. 10.
[10] Ex. 9.
[11] Ex. 17.
[12] Ex. 13.
[13] Testimony of Joseph Johnson.
[14] Ex. 3.
[15] Exs. 1 & 3.
[16] Testimony of Lisa Saffold.
[17] Testimony of Shannon Johnson; Testimony of Joseph Johnson.
[18] Ex. 4.
[19] Testimony of Shannon Johnson.
[20] Ex. 5.
[21] Ex. 16.
[22] Ex. 17.
[23] Ex. 20.
[24] Ex. 21.
[25] Testimony of Shannon Johnson; Testimony of Joseph Johnson.
[26] Ex. 23.
[27] Ex. 25. In addition to the three misdemeanor convictions, the Department's witness also testified that she considered evidence of two additional police calls as evidence that Joseph Johnson was insufficiently rehabilitated. On March 5, 2003, Shannon Florek called the police to complain "about her ex-husband picking up her kids. She doesn't have a problem with him picking up the kids but insists she be there when he does. He left without the kids and said he would return after she got home."^[27] On April 4, 2003, Joseph Johnson asked for police assistance in picking up his son for visitation. When police arrived, Shannon Florek became upset and angry.^[27] No charges were filed against anyone in connection with these incidents, and they do not provide support for Park's conclusion that Joseph Johnson was insufficiently rehabilitated.
[28] Testimony of Jennifer Park.
[29] Testimony of Shannon Johnson; Testimony of Joseph Johnson.
[30] Minn. Stat. § 245A.07, subd. 3.
[31] Minn. Stat. § 245C.22, subd. 4.
[32] Minn. Stat. § 245C.22, subd. 3.
[33] Minn. Stat. § 245A.035, subd. 5.
[34] The Department's witness testified that the Johnsons' decision to remarry had no impact on the decision.
[35] Minn. Stat. § 245C.22, subd. 6